

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Ex Parte Approval of an Interim
Alternative Plan for Protection of the Public
Pursuant to General Order 120-C, Sections 3(E)
and 6.

Application 03-05-039
(Filed May 30, 2003)

Petition to Adopt, Amend, or Repeal a Regulation
Pursuant to Pub. Util. Code Section 1708.5.

Petition 03-05-040
(Filed May 30, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
GRANTING MOTION TO SHORTEN TIME FOR PROTESTS**

1. Summary

In these two proceedings, representatives of California's hot air balloon providers (Petitioners) seek expedited action by the Commission to amend the insurance provisions of General Order (GO) 120-C. Petitioners state that insurance for providers of hot air balloon rides to the public is all but impossible to obtain in a manner that meets all current requirements of GO 120-C, and that this threatens the continued operation of this tourist-oriented industry. This ruling deals with certain procedural requirements of the two proceedings. Specifically, it (1) grants Petitioners' request to shorten time for filing of protests to 10 days from the date of this ruling; (2) adopts Petitioners' proposed Service List for these proceedings; (3) directs Petitioners to serve a copy of Application (A.) 03-05-039 and Petition (P.) 03-05-040 on a government representative of the city and county in which each of the Petitioners operates, and to add those names

to the Service List, and (4) shortens time for government agencies to file protests to 7 days from the date that A.03-05-039 and P.03-05-040 were mailed to them.

2. Background

According to Petitioners, commercial hot air ballooning was a relatively small industry in California until the 1980s, when it began expanding to serve customer demand. Petitioners state that today approximately 50 companies offer balloon rides throughout California. The operations are concentrated in popular tourist regions, including the Napa Valley, Sonoma Valley, Palm Springs, Temecula, and San Diego areas. Petitioners state that most of the commercial balloons are designed to carry more than 6 passengers, and the largest balloons can carry up to 16 passengers. Hot air balloons are certificated and regulated by the Federal Aviation Administration (FAA). Airworthiness standards for manned balloons are set forth in 14 CFR Part 31, pilots and instructors must be licensed under 14 CFR Part 61, and operating and flight rules are set forth in 14 CFR Part 91.

Under GO 120-C, this Commission requires manned balloon operators to carry passenger liability insurance of at least \$100,000 per passenger seat in aircraft with a seating capacity of 1 to 20 persons, along with aircraft property damage liability insurance of at least \$100,000 for each accident. Generally, the insurance must be provided by a company licensed to write insurance in California, although alternative methods of providing insurance protection are set forth in the GO 120-C, Section 3. Insurers are required to file a form, called a PE 794 form, with the Commission to ensure compliance.

According to Petitioners, insurance that complies with all of the requirements of GO 120-C has become impossible to obtain for virtually all of California's balloon operators. They state that since the events of

September 11, 2001, the few insurance companies that did provide balloon insurance have withdrawn from the California market or refuse to write policies that meet all of the requirements of GO 120-C. Unless relief is granted, Petitioners state that they face a Hobson's choice: either cease operations or purchase insurance from a company that does not meet all of the Commission's regulations and face enforcement action by the Commission.

3. Relief Requested

Petitioners seek an alternative plan of protection, as permitted by GO 120-C, Sections 3(E) and 6. They note that such an alternative plan of protection must be approved via formal application to the Commission. The application in these proceedings seeks such approval. The petition seeks adoption on an interim basis of an alternative plan that would remain in place until the application for a rule change in GO 120-C is completed.

The alternative plan proposed by Petitioners would require balloon operators to comply with requirements in addition to those imposed by the FAA, and to obtain insurance that meets the following minimum requirements: (a) the company issuing the policy must be financially sound, with current net assets of at least \$15 million; (b) if the insurance company is incorporated outside the United States, it shall be regulated pursuant to the insurance laws of its country and shall operate in accordance with laws and regulations of its jurisdiction; (c) the policy shall contain a minimum liability limit of \$1 million, and (d) the company issuing insurance shall have re-insurance for any U.S. balloon program with a reinsurance company with a rating by the A.M. Best Company of at least B+, and a Best "Financial Size Category" of XI. Petitioners claim that if these revisions are adopted by the Commission, balloon insurance will become

available through a New Zealand company and, possibly, through other insurers.

4. Motion to Shorten Time for Protest

Rule 44.1 of the Rules of Practice and Procedure require that protests to the application and petition here be filed within 30 days of the date that notice appeared in the Daily Calendar. Notice of these proceedings appeared in the Daily Calendar on June 4, 2003. Protests then could be timely filed by July 7, 2003.

Petitioners ask that the time for protests be shortened to 10 days. They argue that the likelihood of protests is small, that the proposed Service List is large enough to alert interested parties, and that 10 days is adequate for any party to file a protest if that party so desires. (The assigned Administrative Law Judge has received one telephone call from an insurer who states that his agency plans to file comments or a protest.)

For good cause shown, this ruling grants the motion to shorten time for protest by any entity already served to June 20, 2003. The date for filing of protests by any government agency added to the Service List by this ruling will be 7 days from the date of mailing of the application and petition.

5. Motion for Substitute Service List

Rule 14.7(d) requires, among other things, that a petition to amend a rule of the Commission be served on all parties to the proceeding where the rule was adopted. Petitioners state that in this case, GO 120-C was adopted more than 30 years ago, in 1972, by Decision (D.) 79817 and has not been modified since that time. Petitioners have attached to their motion the Service List for D.79817, and it is apparent that the list is outdated and does not include many entities that likely will be interested in these proceedings. Accordingly, Petitioners request a

partial waiver of Rule 14.7(d) in order to substitute a Service List that it has attached to its application and petition. The substitute Service List contains the names and addresses of 75 parties, including balloon operators and associations, insurers, various district attorney offices, the FAA, and several state officials.

For good cause shown, and pursuant to Rule 14.7(d), this ruling grants the motion for partial waiver and adopts the substitute Service List shown as Attachment 2 to the motion as the Service List for A.03-05-039 and P.03-05-040.

6. Further Notice Requirements

Because local government agencies have a compelling interest in the safe operation and adequate insurance coverage of manned balloons in their areas, this ruling directs Petitioners to immediately serve a copy of the application and petition on a responsible government official of each city and county in which the Petitioners operate. The 19 Petitioners are listed in Attachment A (List of Participants) of A.03-05-039. In serving these city and county officials, Petitioners are to advise them that they may, if they wish, file and serve protests with the Commission within 7 days of the date Petitioners mailed the application and petition to them.

Petitioners also are directed to notify the Commission's Process Office of the names and addresses of those city and county officials served so that these names can be added to the Service List for these proceedings.

IT IS RULED that:

1. The motion to shorten time for filing of protests is granted to the extent set forth herein.
2. Petitioners' proposed Service List, set forth as an attachment to both Application (A.) 03-05-039 and Petition (P.) 03-05-040, is adopted as the Service List in each of these proceedings.

3. Petitioners are directed to serve a copy of A.03-05-039 and P.03-05-040 on a government representative of the city and county in which each of the Petitioners operates.

4. Petitioners are to advise city and county representatives to whom they send copies of A.03-05-039 and P.03-05-040 that the representative have 7 days from date of mailing to file protests, if they wish to do so, with the Commission.

5. Petitioners are directed to provide the Process Office with the names and addresses of city and county representatives served so that those names can be added to the Service List in each of these proceedings.

Dated June 10, 2003, at San Francisco, California.

/s/ GLEN WALKER
Glen Walker
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motion to Shorten Time for Protests on all parties of record in this proceeding or their attorneys of record.

Dated June 10, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.